

CRIMINAL REFERENCE.

Before Mr. Justice Pigot and Mr. Justice Macpherson.

1886
May 27.

IN THE MATTER OF THE CORPORATION OF THE TOWN OF CALCUTTA
v. MATOO BEWAH AND OTHERS.*

Beng. Act IV of 1876, s. 248—Conviction for keeping animals without license—Continuing offence between date of summons and date of conviction—Second prosecution for same offence on different date.

Under s. 248 of Bengal Act IV of 1876, a milkman, who has been convicted and fined for keeping an animal without a license, cannot again be prosecuted for the continuance of the same offence before conviction, nor can he be separately prosecuted for the same offence for each day the offence is continued as a separate and distinct offence under that section before conviction.

In a summons taken out on the 27th March against a milkman for an offence under s. 248, Bengal Act IV of 1876, the offence was stated to have been committed on the 16th March; the case was fixed for the 8th April, when the defendant was convicted and fined by the Magistrate. Another summons had been taken out against him on the same day (27th March) for a similar offence stated to have been committed on the 25th March: *Held*, that he could not be convicted on the second charge.

THE facts stated in the reference were as follows:—

The defendants who are milkmen were prosecuted under a summons taken out by Mr. Rebeiro, overseer, on the part of the Corporation of Calcutta on the 27th March last, under s. 248 of Beng. Act IV of 1876. The application stated that the offence was committed on 16th March, and the case was fixed for hearing on the 8th April, when it came on for hearing before the Presidency Magistrate who convicted them and fined them Rs. 8, Rs. 12 and Rs. 15 respectively.

Prior to the trial of this case a summons was also taken out against them on the same date, *i.e.*, 27th March, by Mr. George, inspector, on the part of the Corporation, under the same section.

The application stated that the offence was committed on 25th March, and the case was fixed for hearing on 10th April. When the case came on for trial before the Honorary Magistrate, he

* Criminal Reference No. 2 of 1886 has been referred to by Baboo Aushootosh Dhur, one of the Justices of the Peace for the Corporation of the Town of Calcutta, dated the 16th April 1886.

entertained doubt as to whether the defendants could be tried on the second summons taken out against them, pending the first summons and before its disposal. It was contended on behalf of the Corporation that there were two distinct offences, one committed on the 16th March and the other on the 25th, and that the conviction on the first summons was no bar to the trial of the defendants under the second summons. The Honorary Magistrate, however, was of opinion that s. 248 contemplated one substantive offence for keeping animals without license, and the fine not exceeding Rs. 100 covered the offence committed up to the date of conviction, and that the defendants could not be prosecuted for the same offence committed between the date of the first summons and the conviction on it; but at the request of the Corporation he referred for the opinion of the High Court the following questions:—

1. Whether, under s. 248 of Beng. Act IV of 1876, a milkman who keeps any animal without such license as is mentioned therein, and who has been convicted and fined under that section by the Magistrate, can again be prosecuted for the continuance of the same offence before the date of such conviction.

2. Whether, under s. 248 of Beng. Act IV of 1876, a milkman who keeps any animal without such license as is mentioned therein, can be separately prosecuted for the same offence for each day the offence is continued, as a separate and distinct offence under that section before conviction.

The parties were not represented on the hearing of the reference by the High Court.

The opinion of the Court (PIGOT and MACPHERSON, JJ.) was as follows:—

We are of opinion that both questions should be answered in the negative. The section contemplates one offence and one prosecution, a conviction upon which is to involve a liability to fine not exceeding Rs. 100 and to a further fine not exceeding Rs. 20 for each day during which the offence is continued.

In *Garrett v. Messenger* (1) the offence was the keeping a house for public dancing, &c., without a license, and the section under which the prosecution was instituted provided that

(1) L. R. 2 C. P., 583.

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"every person keeping such house, &c., without such license as aforesaid, shall forfeit the sum of £100 to such person as will sue for the same." Two actions were brought under the Act by common informers, each to recover a penalty of £100. A verdict was taken in the first, and in the second, Wills, J., held that the penal powers of the Act were exhausted by the recovery of one penalty: the full Court concurred in this view, Bovill, C.J., saying that, if the Legislature had intended that there should be more than one penalty, that intention would no doubt have been expressed in clear and unequivocal terms. That case was referred to in *Milnes v. Bale* (1), where the distinction is pointed out between cases where a penalty is imposed in respect of a complex and continuous act, and those where it is imposed in respect of a simple uncomplicated offence which is complete.

In this case, the keeping of animals without a license is, as in the case of *Garrett v. Messenger*, the keeping a house of entertainment without a license was, a comprehensive offence to be proved by many acts, all of which constitute only one offence for which only one penalty is recoverable—that penalty being a fine not exceeding Rs. 100, and such further fine as may be imposed; those of the acts done which are committed after summons and before conviction must be treated as part of it.

We therefore answer both questions submitted to us by the Magistrate in the negative.

J. V. W.

CRIMINAL REVISION.

Before Mr. Justice Norris and Mr. Justice Macpherson.

1886
May. 20.

IN THE MATTER OF THE PETITION OF RAM DAS MAGHII AND ANOTHER.*

Judgment—Form and contents of judgment—Criminal appeal to Magistrate—Criminal Procedure Code, 1882, ss. 367, 424.

A Magistrate, after hearing an appeal from the Deputy Magistrate, gave the following judgment: "I see no reason to distrust the finding of the lower

* Criminal Revision No. 192 of 1886, against the order passed by A. Boruah, Esq., Magistrate of Bogra, dated the 24th of March 1886, modifying the order passed by A. C. Chatterji, Esq., Deputy Magistrate of Bogra, dated the 19th of March 1886.

(1) L. R., 10 C. P., 595 and 597.